

United Mine Workers of America and Lone Star Steel Company and Surface Industries, Inc.
Cases 16-CB-924, 16-CC-517, and 16-CC-518

June 22, 1982

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN

On August 24, 1977, the National Labor Relations Board issued its Decision and Order¹ in the above-entitled proceeding, finding in agreement with the Administrative Law Judge that Respondent Union did not engage in proscribed secondary conduct by picketing the operations of Surface Industries at the Pocahontas mine in an effort to force Lone Star Steel Company to accept its bargaining demands. The Board likewise agreed that the Union did not engage in unlawful conduct by striking to compel Lone Star's acceptance of the "successorship" clause as contained in the National Bituminous Coal Wage Agreement of 1974. The Board, reversing the Administrative Law Judge, found that the "application of contract" clause was a mandatory subject of bargaining and that striking for the clause was not violative of Section 8(b)(3) of the Act. The Board dismissed the complaint in its entirety.

On July 28, 1980, the United States Court of Appeals for the Tenth Circuit issued its decision,² upholding the Board's findings that the successorship clause did not violate Section 8(e) of the Act and was a mandatory subject of bargaining and that Respondent, therefore, did not violate Section 8(b)(4)(A) and 8(b)(3) of the Act by striking to obtain it. However, the court set aside the Board's Order with respect to the application-of-contract clause, finding that this clause was a nonmandatory subject of bargaining, and that Respondent violated Section 8(b)(3) of the Act by striking to obtain this clause. The court remanded the case to the Board for further proceedings in accordance with the court's opinion. On October 2, 1980, the Board filed a petition for certiorari and on February 23, 1981, the Supreme Court denied the Board's petition.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board having duly considered the matter, and having accepted the court's remand as the law of this case, hereby finds that the application-of-

contract clause is a nonmandatory subject of bargaining and that, by striking for this clause, Respondent has engaged in unfair labor practices in violation of Section 8(b)(3) of the Act. The Board hereby affirms the rulings, findings, and conclusions of the Administrative Law Judge and adopts his recommended Order and enters the following Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified and restated in full below, and hereby orders that the Respondent, United Mine Workers of America, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Demanding that Lone Star Steel Company, or any other employer, accept as an element of any collective-bargaining agreement the clause referred to as the "Application of This Contract to the Employer's Coal Lands" set forth in the National Bituminous Coal Wage Agreement of 1974.

(b) Striking and/or picketing Lone Star Steel Company, or any other employer, for the purpose of forcing Lone Star Steel Company, or any other employer, to agree to the application of contract to coal lands clause.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Withdraw, and notify Lone Star Steel Company that it has withdrawn, its demand for the application of contract to coal lands clause.

(b) Post at Respondent's business offices copies of the attached notice marked "Appendix."³ Copies of said notice, on forms provided by the Regional Director for Region 16, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Send a signed copy of the attached notice marked "Appendix" to each striking employee and sign and return to the Regional Director for Region 16 sufficient copies of the attached notice

¹ 231 NLRB 573, former Member Walther dissenting in part.

² *Lone Star Steel Company v. N.L.R.B.*, 639 F.2d 545.

³ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

marked "Appendix" for posting by Lone Star Steel Company, if willing, in conspicuous places, including all places where notices to employees are customarily posted.

(d) Notify the Regional Director for Region 16, in writing, within 20 days after the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint is dismissed to the extent that it alleges Respondent engaged in any other unlawful activity than that set forth in this Order.

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT strike, picket, or otherwise try to force Lone Star Steel Company, or any other employer, into accepting the application of contract to coal lands clause or any other nonmandatory subject of collective bargaining.

WE WILL NOT demand that Lone Star Steel Company, or any other company, accept our proposed contract clause set forth in the National Bituminous Coal Wage Agreement of 1974 styled the "Application of This Contract to the Employer's Coal Lands."

WE WILL hereby withdraw our demand for such a clause in connection with our negotiations for a contract with Lone Star Steel Company.

UNITED MINE WORKERS OF AMERICA